

IP 01-0112-CR 1 T/F US v Shobe  
Magistrate Kennard P. Foster

Signed on 6/26/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. IP 01-112-CR-01 (T/F)
	)	
JACQUELINE SHOBE,	)	
	)	
Defendant.	)	

**MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on May 30, 2006, designating this Magistrate Judge to conduct hearings on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on May 26, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e). All proceedings were held on June 26, 2006 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Ms. Shobe appeared in person with her retained counsel, Kevin McShane. The government appeared by Donna Eide, Assistant United States Attorney. U. S. Parole and Probation appeared by Tim Hardy, U. S. Parole and Probation officer, who participated in the proceedings.

The Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. Kevin McShane was present and represented Ms. Shobe in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Ms. Shobe and her counsel who informed the Court that they had read and understood the specifications of violations and waived further reading thereof.

3. Ms. Shobe was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition.

4. Ms. Shobe would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Ms. Shobe had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Ms. Shobe had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on May 30, 2006.

7. Mr. McShane stated that Jacqueline Shobe would stipulate there is a basis in fact to hold her on the specifications of violation of supervised release set forth in the Petition. Ms. Shobe executed a written waiver of the preliminary examination, which was accepted by the Court.

8. Ms. Shobe, by counsel, stipulated that she committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<b>The offender shall pay any restitution that is imposed by this judgement and that remains unpaid at the commencement of the term of supervised release.</b>

Based on the offender's failure to maintain regular payments toward her restitution balance, she entered into an agreed garnishment for the sum of 15% of her disposable earnings through her employer, the Indianapolis Star Newspaper. The Agreed Final Order in the Garnishment was approved by the Court on November 3, 2005.

Between December 8, 2005, and March 13, 2006, no payments were received in accordance with the garnishment. On May 17, 2006, Financial Ligation Unit (FLU) agent Michelle Frydell spoke with Susie Taylor in the payroll office of the Indianapolis Star Newspaper and inquired as to why garnishment payments had stopped. The agent was advised the offender's employment was involuntarily terminated on March 13, 2006, and that no payments had been received between December 8, 2005, and the date of her termination because the offender told the employer she had filed bankruptcy and provided documentation of the filing.

On May 17, 2006, FLU agent Frydell searched the Bankruptcy docket and found no entry under either the offender's name or social security number. FLU agent Frydell again contacted Susie Taylor and requested a copy of the document that the offender provided to their corporate payroll office in order to stop the garnishment of her wages.

Upon review of the document, the agent noticed the filing date indicated on the document was December 10, 2005, but the case number referenced on the document was 03-20410 (indicating a 2003 case filing). The agent then searched for the 03-20410 case number which revealed a bankruptcy case filed in the name of Duwan Lonnell Adams. The agent contacted the Bankruptcy Clerk's Office and verified that there was no bankruptcy records found under the name Jacqueline Shobe or her social security number.

Based on the above alleged facts, it appears that the document submitted by the offender to her employer in order to stop the garnishment of her wages and void the collection of the restitution debt imposed by this Court appears to be fraudulent. FLU agent Michelle Frydell indicated that she would testify to the above alleged facts.

Since December 8, 2005, the offender has failed to make her agreed monthly payment of 15% of her disposable earnings for her restitution obligation. As of May 24, 2006, the restitution balance is \$13,590.88. The offender recently made a \$100.00 payment on May 18, 2006. However, prior to that date she was four months delinquent on her restitution obligation.

- 2                   The offender shall report to the probation officer as directed by the court or probation officer, and shall submit a truthful and complete written report within the first five days of each month.**

The offender failed to submit monthly supervision reports for January, February, March, and April 2006.

- 3                   The offender shall notify the probation officer ten days prior to any change in residence or employment.**

On March 27, 2006, the offender informed the probation officer that she was laid off from her job. According to her employer, the offender was involuntarily terminated on March 13, 2006. The offender failed to notify the probation of the loss of her employment until two (2) weeks after she was terminated.

- 4                   The offender shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.**

During a phone conversation with the offender on March 27, 2006, she reported to the probation officer that she was laid off from her job at the Indianapolis Star Newspaper.

On April 18, 2006, during an office visit, the offender again reported to the probation officer that she was laid off from her job with the Indianapolis Star Newspaper. The offender reported a reduction of staff in the department she worked in was the cause of her job loss.

The probation officer submits that the offender failed to answer truthfully the inquiries regarding the loss of her employment.

According to the investigating agent in this case, the offender was involuntarily terminated due to misconduct.

The Court placed Ms. Shobe under oath and directly inquired of her whether she admitted violations of the specifications of his supervised release set forth above. Ms. Shobe stated that she admitted the above violations as set forth. The Court now finds there is a basis in fact for her admissions and accepts same.

Counsel for the parties further stipulated to the following:

- 1) Ms. Shobe has a relevant criminal history category of VI, U.S.S.G. §7B1.4(a).
- 2) The most serious grade of violation committed by Ms. Shobe constitutes a Grade C violation, pursuant to U.S.S.G. §7B1.1(b).
- 3) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release, the range of imprisonment applicable to Ms. Shobe is 8-14 months.
- 4) The parties did not agree on the appropriate disposition of the case.

9. The defendant and her counsel made allocution. The government made allocution. The U. S. Parole and Probation Officer responded to the Magistrate Judge's questions regarding the defendant's conduct.

The Court having heard the evidence and/or arguments of Ms. Shobe, her counsel and the government, now finds that Ms. Shobe violated the specified conditions of supervised release as delineated above in the Petition to Revoke her supervised release.

Ms. Shobe's supervised release is therefore **REVOKED** and she is sentenced to the custody of the Attorney General or his designee for a period of 14 months. The service of the sentence shall begin immediately. At the conclusion of Ms. Shobe's term of confinement, she will be subject to a period of two years supervised release, under the same conditions previously imposed at sentencing.

The Magistrate Judge requests that Mr. Hardy, U. S. Parole and Probation Officer, prepare for submission to the Honorable John Daniel Tinder, Judge, as soon as practicable, a supervised

release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

The District Court may refuse to accept the stipulations and waivers and conduct a revocation hearing pursuant to Title 18 U.S.C. §3561 *et seq.* and Rule 32.1 of the *Federal Rules of Criminal Procedure* and may reconsider the Magistrate Judge's Report and Recommendation, including making a *de novo* determination of any portion of the Report or specified proposed findings or recommendation upon which he may reconsider.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above recommendation revoking Jacqueline Shobe's supervised release and the sentence imposed of imprisonment of 14 months in the custody of the Attorney General or his designee. At the

conclusion of Ms. Shobe's incarceration, she will be subject to a period of two years supervised release under the same conditions previously imposed at sentencing.

IT IS SO RECOMMENDED this 26<sup>th</sup> day of June, 2006.

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Kennard P. Foster, Magistrate Judge  
United States District Court  
Southern District of Indiana

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